

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Thursday, August 14, 2014
)	
Defendants.)	(10:28 a.m. to 11:29 a.m.)

STATUS CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Officer:	Adolph Castillo
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APPEARANCES FOR:

Plaintiffs:

ARMAND DERFNER, ESQ.
P.O. Box 600
Charleston, SC 29402

CHAD W. DUNN, ESQ.
KEMBEL SCOTT BRAZIL, ESQ.
Brazil and Dunn
4201 Cypress Creek Parkway, Suite 530
Houston, TX 77068

J. GERALD HEBERT, ESQ.
191 Somervelle Street, Suite 405
Alexandria, Virginia 22304

EMMA SIMPSON, ESQ.

Mexican American
Legislative Caucus,
et al.:

EZRA D. ROSENBERG, ESQ.
Dechert, LLP
902 Carnegie Center, Suite 500
Princeton, NJ 08540-6531

Texas League of Young
Voters Education Fund:

DANIELE CONLEY, ESQ.
KELLY DUNBAR, ESQ.
1875 Pennsylvania Avenue NW
Washington, DC 20006

State of Texas:

JOHN BARRET SCOTT, ESQ.
Scott, Yung, L.L.P.
208 N. Market Street
Suite 200
Dallas, TX 75202

LINDSEY WOLF, ESQ.
BEN DONNELL, ESQ.
DAVID TALBOT, ESQ.

United States
of America:

ANNA BALDWIN, ESQ.
BRADLEY HEARD, ESQ.
U. S. Department of Justice
950 Pennsylvania Avenue, N.W.
NWB Room 7125
Washington, DC 20530

Oscar Ortiz, et al.:

MARINDA VAN DALEN, ESQ.
Texas Rio Grande Legal Aid
4920 North IH 35
Austin, TX 78751

1 Corpus Christi, Texas; Thursday, August 14, 2014; 10:28 a.m.

2 (Ms. Wolf, Ms. Baldwin, Ms. Conley and Messrs. Heard, Dunn,
3 Rosenberg, Freeman and Tatum Appeared Telephonically)

4 (Call to Order)

5 **THE COURT:** The Court calls Cause Number 2:13-193,
6 *Veasey, et al versus Perry, et al.*

7 **THE CLERK:** Your Honor, for the individuals we have
8 Mr. Dunn, Mr. Derfner, Mr. Hebert, Mr. Brazil and Ms. Simpson
9 present. For the U.S., Ms. Baldwin and Mr. Heard. For the
10 Mexican American Legislative Caucus, Mr. Rosenberg. For Ortiz,
11 et al, Ms. Van Dalen. For the League of Young Voters,
12 Mr. Dunbar and Ms. Conley.

13 For the State of Texas present in the courtroom is
14 Mr. Scott and Mr. Donnell, and on the line is Ms. Wolf.
15 Mr. Rios is on a plane and will not be attending, and we don't
16 have anybody present on the line for the non-party senators.
17 And Mr. Talbot should be also present on the line for the
18 United States.

19 **THE COURT:** All right. There are several matters
20 pending. Some are carry-overs. It's my understanding there
21 was an agreement reached on the non-party senators' motion to
22 quash. Is that correct, Mr. Scott?

23 **MR. SCOTT:** That is correct, your Honor. And we also
24 in reaching out to Mr. Talbot it's my understanding -- and I
25 think he's supposed to be on line for this or someone from his

1 section-division. But there is an agreement to allow the Court
2 to rule on those pending House representatives -- House of
3 Representatives' issues related to their subpoenas on the
4 submissions that we've already made to the Court.

5 **THE COURT:** Okay. So agreement on the senators' but
6 not the state reps.

7 **MR. SCOTT:** Well, and my understanding is he's still
8 trying to get complete agreement. One of them is up in -- one
9 of the representatives is up in New York --

10 **THE COURT:** Okay.

11 **MR. SCOTT:** -- and another one is in another place
12 and --

13 **THE COURT:** So still working on that.

14 **MR. SCOTT:** We're still working on that but we've
15 also -- he does not have any further assurances that anybody is
16 going -- everybody is going to be in agreement from their
17 standpoint or any of them I think at this point in time.

18 **THE COURT:** Okay. I think I'm going to set that one
19 for a hearing.

20 **MR. SCOTT:** Okay.

21 **THE COURT:** Because I don't want to do a whole lot of
22 extra work if I don't need to. So, Brandy, we'll go ahead and
23 just set that for a hearing. See if there are some agreements,
24 then what do I need to address --

25 **MR. SCOTT:** Okay.

1 **THE COURT:** -- or we'll do it that way. I think it
2 will be more efficient for the Court. So we'll just set that
3 one.

4 Now, will everyone need to be on the line for that or
5 just -- well, we'll just get everyone on the line I guess.
6 I'll have Brandy work on that.

7 So the next matter was the Defendants' motion to
8 compel the documents regarding the election crimes, voter fraud
9 issues or documents. We briefly addressed that at the last
10 hearing. The parties were conferring on that. I'm showing
11 that as DE441. Is there anything further on --

12 **MS. WOLF:** Your Honor, this is Lindsey Wolf for the
13 State. And we've conferred with the Department on this
14 particular issue. However, we've been unable to come to an
15 agreement. We are -- the United States has offered to search
16 the Acts and the LIONS databases, which there --

17 **THE COURT:** I'm sorry, I'm sorry, I didn't hear that.
18 I'm sorry, to search the what?

19 **MS. WOLF:** The Acts and LIONS databases, which are
20 the databases that were explained to your Honor at the last
21 hearing, which one is maintained by the executive offices of
22 the United States Attorneys, and other database is maintained
23 by the Criminal Division of the Department of Justice.

24 And they've agreed to search in terms of open and
25 closed matters. And our understanding from our conversations

1 with Mr. Heard and also from some correspondence that we
2 received from the Department is that a matter -- for purposes
3 of the Acts database only includes investigations which were a
4 minimum of 30 minutes. And on the LIONS database, which is the
5 database which is maintained for the U.S. Attorney's Offices,
6 that only includes matters which goes on for more than an hour.

7 And they have not agreed to search the FBI database,
8 which we understand from the correspondence is referred to as
9 Sentinel. And that's where we're kind of running into some
10 issues because they use a lot of qualifying language in their
11 correspondence. They refer to bona fide instances of voter
12 fraud. They refer to substantive FBI investigation because
13 they claim that if it's a substantive FBI investigation, then
14 the FBI would have been required to consult with the Criminal
15 Division or the U.S. Attorney's Office.

16 But the problem the Defendants are facing, again,
17 this is not the same level of information that we provided in
18 conjunction with major officials' depositions in terms of --

19 **THE COURT:** Okay. You know what? You're going to --
20 I'm sorry. You're going to have to slow down. I'm really not
21 catching a lot of what you're saying. Part of it may be just
22 you coming over the phone but --

23 **MR. SPEAKER:** It's too loud.

24 **THE COURT:** Partly it's too loud but I --

25 **(Voices heard off the record)**

1 **THE COURT:** The recorder is having a problem, too.
2 It's not just the Court so --

3 **MS. WOLF:** No, I apologize, your Honor. Is this
4 better?

5 **THE COURT:** Not really. We're going to try to lower
6 the volume and see what we can do.

7 **MR. SCOTT:** And your Honor -- Lindsey, let me try and
8 step in here momentarily.

9 Your Honor, Major Mitchell from our office was
10 presented to the other side for deposition. We provided -- if
11 I may turn this over to the Court -- basically a three-part
12 summary. And that's the materials that we provided to the
13 party Plaintiffs in this case, which is -- includes all the
14 referrals since 2002, even though I think 2004 was the time
15 period. It includes all of the prosecutions that have been
16 completed and it includes the matters that were resolved while
17 charges were pending.

18 What we've done on the referrals is break it down by
19 county, by date of referral and the type of matter that was at
20 bottom in the dispute. And that is the material that we're
21 simply asking the Department of Justice. If they can produce
22 it in such a way, in such a summary format that we did, that
23 would be great and I think that resolves the issue.

24 **THE COURT:** Okay. Is it Ms. Baldwin? Are you going
25 to speak --

1 **MR. HEARD:** Your Honor, this --

2 **THE COURT:** Mr. Heard?

3 **MR. HEARD:** Yes, your Honor. Good morning. This is
4 Brad Heard for the United States. I'll be addressing this
5 motion.

6 Your Honor, we have worked diligently with the
7 Defendants' counsel since the time of our last hearing to try
8 and work out a resolution to this issue. And we believe we
9 have agreed to provide information that is comparable to what
10 the State has provided but, moreover, that the United States is
11 comfortable with in order to protect its privileges related to
12 open and closed investigations.

13 We have reaffirmed our willingness to search the
14 Department's Acts and LIONS databases -- that's A-c-t-s and
15 LIONS, L-i-o-n-s databases for non-sealed election fraud
16 related prosecutions filed by the Department of Justice between
17 2004 to the present and to provide the Defendant with a list of
18 those cases and the election crimes alleged in those.

19 We have also informed the Defendants that the
20 Department is willing to search Acts and LIONS to determine the
21 number of election fraud investigations that have been opened
22 and closed between 2004 to the present and to provide the
23 Defendants with those numbers. And those numbers will include,
24 but not be limited to, any investigation in which the FBI was
25 tasked with conducting a field investigation. Because as we've

1 explained to the Defendant, the Department of Justice
2 regulations require the FBI to consult with either the Criminal
3 Division or the U.S. Attorney's Office before conducting a
4 field investigation relating to an election fraud case.

5 We've also explained to the Defendants that the
6 Sentinel database that the FBI maintains is not as easily
7 searchable for -- it's not organized like Acts and LIONS and
8 it's not as readily ascertainable which investigations relate
9 to the election related crimes.

10 But the two reports that we have offered to give
11 Defendants give them all the information that they reasonably
12 would need to make whatever related arguments they believe are
13 necessary to support the State of Texas' action in pursuing it
14 and enacting SB14.

15 Now, the Court explained at last week's hearing the
16 Defendants should not be asking for, and the United States is
17 not required to provide, privileged information relating to the
18 investigation. And in our estimation that includes information
19 that would reveal confidential investigatory file information,
20 provide clues to the government's deliberative process, reveal
21 any prosecutorial focus on election crime or election
22 jurisdiction or interfere in any way with the Attorney
23 General's prosecutorial discretion.

24 Information relating to judicial district in which
25 investigations have occurred or attending more specific charges

1 that are being investigated could allow potential targets, your
2 Honor, to discover that their activities are being investigated
3 for possible prosecution. In extreme circumstances it could
4 be -- it could put potential informants or witnesses at risk
5 for bodily injury or even death. The broad statistical data
6 regarding the number of election investigations commenced and
7 closed nationwide carried less of that risk. And the United
8 States has consulted with the Criminal Division with the
9 Executive Office of the U.S. Attorneys, believe it's able to
10 provide that information without risking its privileges. And
11 we've offered to do that to the Defendants.

12 We believe, in sum, that those reports are more than
13 sufficient to provide the Defendants with the discovery they
14 seek. And in accordance with our cross motion we would ask the
15 Court to enter a protective order to limit discovery by the
16 Defendant into this -- into nationwide election crime to the
17 searches that the United States has described to the Court and
18 has described in written correspondence to the Defendants.

19 **THE COURT:** Okay. Let me just ask the Defense, then.
20 What is it the Defense is requesting outside of what's being
21 offered at this point?

22 **MR. SCOTT:** And -- go ahead, Lindsey. I'm sorry.

23 **MS. WOLF:** Yeah, if there's technical issues I will
24 defer to John. But I think where we're going is we need
25 referral investigation, which is what we gave in spreadsheet

1 form, without waiving any of our privileges and we're not going
2 to get that from Acts and LIONS. Acts and LIONS, I think, as I
3 said, did not include the FBI information beyond, you know, if
4 there's an investigation that the FBI has consulted with the
5 U.S. Attorney's Office with for less than an hour, it's not
6 going to be in that particular database, your Honor.

7 **THE COURT:** You didn't get that?

8 **(Voices heard off the record)**

9 **THE CLERK:** Ms. Wolf, can you maybe slow down? I
10 think that may be, also, some of the issues. It's too loud,
11 and then if you could just slow down so Genay can get an
12 accurate record.

13 **MS. WOLF:** Sure.

14 **THE CLERK:** Thank you.

15 **MS. WOLF:** I think the issue, your Honor, is that the
16 LIONS database, which they're proposing to search, which
17 Mr. Heard has represented that when the FBI opens an
18 investigation they have to consult with the U.S. Attorney's
19 Office. And but nothing gets into the LIONS database unless an
20 Assistant U.S. Attorney is consulted on a matter for more than
21 an hour. And so that's not going to cover all of the FBI's
22 investigations that would be maintained in the separate FBI
23 database.

24 So we're in a position where we're not getting the
25 complete amount of information which we provided to the United

1 States in the form of a summary spreadsheet, which also
2 included referral investigations into very general categories
3 of documents that Mr. Scott described.

4 **THE COURT:** Well, has the Defense -- has Mr. Heard
5 seen that summary that was just given to me by Mr. Scott?
6 Mr. Heard?

7 **MR. HEARD:** I have seen -- I don't know if I've seen
8 the most recent summary, your Honor. I have seen similar
9 summaries that they've produced.

10 **THE COURT:** Well, I don't know what you've seen --

11 **(Voices overlapping)**

12 I don't know what you've seen. I'm asking have you
13 seen what was just turned over to me? And I don't know how to
14 describe it to him, Mr. Scott, so he knows.

15 **MR. SCOTT:** There were three different spreadsheets.
16 One includes referrals that were made by different outside
17 entities, mostly Secretary of State. It lists the county on
18 that document where the act was alleged to have taken place,
19 the date of the referral, the entity that made the referral and
20 a very brief summary of the category or type of referral that
21 it related to. That's the one on the referral sheet or
22 spreadsheet.

23 There are two other sheets. One involves
24 prosecutions that are complete. The other is a very short
25 spreadsheet that includes prosecutions -- or while charges were

1 pending the matter was resolved. But I think for sure that all
2 three of them have been produced.

3 **THE COURT:** Okay. And so, Mr. Heard, you're saying
4 that the Government is not willing to do the summary type
5 production?

6 **MR. HEARD:** That's not quite what I'm saying, your
7 Honor. What I'm saying is that we may not be willing to
8 produce the level of detail on their referral spreadsheet that
9 they have indicated they --

10 **THE COURT:** Well, tell me where the issue is. I
11 can't help you all. And if you all are going to be just
12 arguing generally -- it's not just you, Mr. Heard. But I need
13 to get down to the bottom line. Where is the detail, where is
14 the rub, what's the problem, what's the defense asking for that
15 the Government is not willing to provide?

16 **MR. SCOTT:** We want the --

17 **MR. HEARD:** Well, I'll try to do my best to explain
18 that, your Honor. We are providing referral investigations --

19 **THE COURT:** Okay, I'm going to do this. You all need
20 to sit down, look at that summary that's been provided by the
21 State of Texas by the Defendant here, and tell me exactly what
22 the United States is not willing to produce, and I'll take it
23 from there. We're going in circles here. So you all are going
24 to sit down, and you all can do it right after we finish this
25 hearing, and we can get right back on the phone and the

1 Government can say, "I've looked at these summaries and this is
2 what we can do, we can't do this or we're not willing to do
3 this." And I'm not going to waste my time on this for now any
4 more, okay?

5 **MR. HEARD:** I'm happy to do that, your Honor.

6 **THE COURT:** And I don't mind getting right back on
7 the phone with you all so we can resolve this issue. You know,
8 when I get on when we're having these status hearings, we need
9 to get right to the point. Here's the issue and this is what
10 we're willing to do and not do. And I don't need to get in the
11 middle of you all going back and forth on that.

12 So I'm going to move on. The next thing I have that
13 we had briefly discussed, and there was some further briefing
14 provided, was the Defendants' motion to compel the production
15 of expert disclosure. And that was DE454.

16 **MR. SCOTT:** Your Honor, what we've been given so far
17 to date is an enormous amount of data. The data continues to
18 change. We received new data this week. Mr. Donnell gave me a
19 great analogy of what's going on. We've been told what the
20 symptoms of ebola are, we've been given a phone book that has
21 13 million different names in it and we've said we have all the
22 data; you know how we got the data; it's there for you to find.

23 So what we started this process about exchanging all
24 this information long ago and far away was so that the parties
25 could work off basically the same set of information to come up

1 with their perspectives on why the no-match list was one way or
2 the other so that the Court could be able to make an informed
3 decision, something that the D.C. court did not have before it.

4 So all those efforts to accomplish that have been for
5 naught. We've been played as the state. I guess I'm the fool
6 in the whole game because I've gone along with this. But at
7 the end of the day we don't have the materials we need in order
8 to be able to attack the foundation that their experts have.
9 We are not being provided that information.

10 This week we found out on Tuesday that
11 Dr. Ansolabehere, who the Department of Justice has represented
12 in the last hearing, had not created these no-match lists, had
13 provided a spreadsheet of specific individuals who were located
14 in a census track, which is a subpart of the county, and
15 identified those individuals, or at least the number of
16 individuals in that census track, who did not possess the
17 adequate amount of I.D. to vote in order to vote under SB14;
18 and who Dr. Webster, who will be offering an opinion in this
19 case, will say that those people have been divested of their
20 right to vote as a result of SB14.

21 What we want is simply the ability to make sure that
22 we're talking about the same group of people. So we want
23 those -- we want the identity of those individuals who are part
24 of the census tracks. We want the no-match list from
25 Dr. Herron, from Dr. Ansolabehere and from Dr. -- oh, what's

1 the guy's name? Hold on one second.

2 **MR. SPEAKER:** Bazelon.

3 **MR. SCOTT:** Bazelon. All three of which have come up
4 with their own no-match lists. None of them have produced
5 anything. They say it's in the data, this 13 million person
6 phonebook.

7 **THE COURT:** Wait. So you're saying the experts --
8 these experts have produced these lists.

9 **MR. SCOTT:** They have produced a report that
10 identifies their take on the list. They have produced data.
11 Now, the newest data contains fields that's never -- did not
12 exist in the very first data pool. We had agreed on the fields
13 that were going to be produced as far as the fields that were
14 going to be contained that the Department of Justice was going
15 to create for everybody to work off of. The latest one -- and
16 we've actually asked our expert on his report for Friday to
17 identify the different changes that have taken place throughout
18 the field materials. And so what we're trying to get is that
19 data.

20 There's also this subset, which is the survey
21 results.

22 **THE COURT:** Okay, I'm hearing two things. I'm
23 hearing data; I'm hearing lists. And I think the Government in
24 their responses are saying we've given them all the data --

25 **MR. SCOTT:** Yes.

1 **THE COURT:** -- from what I -- the way I read the
2 motion to compel, the Defendants' motion to compel, is we need
3 these no-match lists.

4 **MR. SCOTT:** Yes. And for the record, your Honor,
5 Dr. Ansolabehere in his report on Page 7 of that report and
6 Page 8, he says, the match -- produces a no-match list. Then
7 later on he says, "Each record on this list is treated as an
8 individual registered voter who lacks acceptable photo I.D."
9 That sounds like there's a list there.

10 **THE COURT:** Okay. Is there a list?

11 **MS. BALDWIN:** Your Honor?

12 **THE COURT:** Is there a list?

13 **MS. BALDWIN:** Your Honor, this is Ms. Baldwin. The
14 data that's been produced is this --

15 **THE COURT:** I'm not talking about data. Is there a
16 list? Is there such a list that Mr. Scott is referring to?

17 **MS. BALDWIN:** There has been for Dr. Ansolabehere.

18 **THE COURT:** Is there a list?

19 **MS. BALDWIN:** Your Honor, we've --

20 **THE COURT:** Yes or no?

21 **MS. BALDWIN:** Not that Dr. Ansolabehere has yet
22 created --

23 **THE COURT:** Ma'am, ma'am, ma'am, answer my question.
24 Is there a no-match list? And if you didn't understand my
25 question, let me know.

1 **MS. BALDWIN:** Yes, ma'am. I just want to clarify --

2 **THE COURT:** No, no. Yes, there's a list is the
3 answer, correct?

4 **MS. BALDWIN:** There is a list of people --

5 **THE COURT:** Stop right there. Is there a list?

6 **MS. BALDWIN:** Yes, ma'am, there's data that we
7 produced that includes who is considered to be not matched.

8 **THE COURT:** Okay. Has that been produced to
9 Mr. Scott?

10 **MS. BALDWIN:** Yes, ma'am. It has not been produced
11 in a stand-alone form. So there are 13 million registered
12 voters in --

13 **THE COURT:** Wait, wait, wait. You said there is a
14 list, and my question was has that been produced? Yes or no.

15 **MS. BALDWIN:** There's not a stand-alone list that
16 exists for Dr. Ansolabehere's prior report. We're going to
17 produce at Defendants' request something that we're asking him
18 specifically to create, because we want this to be a
19 transparent process, just out of the whole universe of
20 13 million voters only the people who are literally not
21 matched, an actual stand-alone no-match list.
22 Dr. Ansolabehere's prior use of the term "no-match list" was a
23 term of art in that it was people identified out of the overall
24 13 million --

25 **THE COURT:** I'm sorry, I need to go back. My

1 question was is there a list and you said "yes," correct?

2 **MS. BALDWIN:** There are voters who've been
3 identified. There wasn't a stand-alone document. To the
4 extent, your Honor, that you mean list as is there a list where
5 it's just the people who are considered by Dr. Ansolabehere not
6 to have any form of I.D. and there's nothing else on that
7 document, that is not something that Dr. Ansolabehere has
8 previously made in that format for his --

9 **THE COURT:** So you're going to make the fact finder
10 at trial pick through all that?

11 **MS. BALDWIN:** No, ma'am.

12 **THE COURT:** What are you going to do?

13 **MS. BALDWIN:** It is something that Dr. Hood
14 (phonetic) has been able to replicate from the data before.
15 But as we wrote in our motion, we are happy to create that list
16 and to provide it to Defendant --

17 **THE COURT:** So then why are we discussing this?

18 **MS. BALDWIN:** Your Honor, we said in our motion -- in
19 our response to the motion that we would do that. We are
20 committed to making sure that this process is as transparent as
21 possible. And if there are questions that Defendants have --
22 Mr. Scott e-mailed a question about the data set to me
23 yesterday. I responded with further clarification. I talked
24 with Mr. Whitley (phonetic) this morning. If there is anything
25 that the Defendants don't understand about the data productions

1 that we've made at this point, we are happy to clarify and
2 anything that --

3 **THE COURT:** Okay. Mr. Scott is asking for some
4 lists.

5 **MS. BALDWIN:** Yes, ma'am. And I --

6 **THE COURT:** And I can't get a straight answer from
7 you.

8 **MS. BALDWIN:** There wasn't a pre-existing stand-alone
9 no-match.

10 **THE COURT:** I get that. But you're saying you're
11 willing to create something, or what is it?

12 **MS. BALDWIN:** Yes, ma'am. I'm willing -- we are
13 willing --

14 **THE COURT:** Where is it? It hasn't been created yet?

15 **MS. BALDWIN:** Dr. Ansolabehere has a reply report
16 that's due tomorrow. And so we are going to be providing that
17 report tomorrow.

18 **THE COURT:** Mr. Scott?

19 **MR. SCOTT:** That's great, your Honor, as long as on
20 that list we can identify the individuals who he has also
21 identified, passed on to Dr. Webster, and we have the ability
22 on these lists to know apples and apples. I just don't want to
23 get in a situation where we come before the Court trying to
24 compare apples to oranges. So the fact that we -- the list
25 sounds great. So that resolves that issue with

1 Dr. Ansolabehere.

2 So that leaves Dr. Bazelon and Dr. Herron to also
3 have their lists so that who -- all three of which come up with
4 different percentages in their reports on their take on the
5 lists which --

6 **THE COURT:** Do you want to address those other
7 experts, Ms. Baldwin?

8 **MR. DUNN:** Your Honor, this is Chad Dunn on behalf of
9 the Veasey LULAC Plaintiffs. If I may be permitted to speak --

10 **THE COURT:** Yes.

11 **MR. DUNN:** -- on the Dr. Herron issue?

12 **THE COURT:** Yes.

13 **MR. DUNN:** This is the first I've heard that the
14 Defendants want some additional information from Dr. Herron.
15 In fact, my cocounsel, Ms. Simson, sent the State an e-mail on
16 July 16th saying we understand you have some issues with
17 Dr. Ansolabehere's list; please let us know immediately if you
18 need additional data from us. We got a response from the State
19 saying I'll get back to you if we have any problems with
20 Dr. Herron.

21 **THE COURT:** Okay. Well, let me say this. If this
22 has not been discussed, you all need to do that.

23 **MR. SCOTT:** Okay. So --

24 **MR. DUNN:** Let me just -- and I understand that. And
25 let me just add where I think the rub is, what I think is

1 causing the confusion. These experts have produced the data
2 set that they analyzed, and they added a column in that data
3 clearly identifying who was a match and who wasn't a match. So
4 when Ms. Baldwin is talking about has this been produced, it's
5 been produced from day one when the reports were produced,
6 where it's clearly identifiable by the State who actually
7 matched the database and who didn't.

8 Apparently what the State wants is an output of just
9 the names of no-matches. And the Department of Justice is
10 committed to doing that. And now that I hear that they want
11 that from Herron, despite our request back on July 16th to see
12 if they need something else from Herron, we'll commit to doing
13 that. I haven't talked to Herron to figure how many days -- a
14 day or two or however long it would take to do that, but we'll
15 get it done.

16 **THE COURT:** All right.

17 **MR. SCOTT:** Great.

18 **THE COURT:** Who is going to address -- is it Bazelon
19 then?

20 **THE CONLEY:** Yes, your Honor. This is Danielle
21 Conley for the League and Ms. Clark. We're in a similar
22 position. This is the first time that we've heard that they
23 wanted any additional information from Mr. Bazelon. We're more
24 than happy to talk with the State about whatever it is that
25 they want.

1 **MR. SCOTT:** Super.

2 **THE COURT:** All right. Then you all will discuss
3 that further.

4 **MR. SCOTT:** So then the next --

5 **THE COURT:** I guess maybe I should get angrier a
6 little more often.

7 Anyway, so the other part of this 454DE was the list
8 of those individuals who responded to a survey, correct?

9 **MR. SCOTT:** Yes, ma'am. And that's the Barrera
10 Sanchez (phonetic) survey. And what they have done is come up
11 with results from their survey, and they are saying there is a
12 percentage of people in the state of Texas who are prevented
13 from voting because they don't have access to proper photo I.D.
14 What we want would be the results of the survey to be able to
15 check the validity of it, their foundation.

16 This is a unique situation that we don't -- that to
17 my knowledge has never really existed from the standpoint of
18 being able to evaluate the underlying opinion -- or the survey
19 results of these respondents. At the very least we should be
20 entitled to get that group, that subgroup of the survey where
21 the respondents have said that they do not have the proper I.D.
22 in order to be able to vote. That way we can track to find out
23 if those results are proper or not. We can attempt to attack
24 or not the foundation of this expert's opinion.

25 **THE COURT:** Okay. Who is going to address it?

1 Mr. Dunn, Mr. Rosenberg or --

2 **MR. ROSENBERG:** This is Mr. Rosenberg, your Honor.
3 And we have fully briefed this issue and explained why this
4 sort of discovery is never had. The Defendants have been given
5 the results of the survey. They have all the data, they have
6 each individual answer, they've been able -- they know the full
7 methodology. They know how the universe of respondents was
8 chosen, which is under the Fifth Circuit law all they need to
9 attack the validity of the survey.

10 The surveys, as we set forth in our brief, are
11 conducted with an expectation of confidentiality. This is why
12 the courts allow these sorts of surveys without requiring the
13 disclosure of the survey respondents because that would
14 underlie the efficacy of these surveys. And the Defendants
15 simply do not need this sort of evidence in order to do exactly
16 what the Fifth Circuit says we're supposed to which, which is
17 look at the methodology, look at the manner in which the survey
18 was conducted, look at the adequacy of the universe of the
19 survey and look at the focus of the format in question.

20 **THE COURT:** All right. Mr. --

21 **MR. ROSENBERG:** The --

22 **THE COURT:** Go ahead, I'm sorry.

23 **MR. ROSENBERG:** No, I'm sorry, your Honor.

24 **THE COURT:** No, I was just going to ask Mr. Scott if
25 he wanted to address the briefing provided --

1 **MR. SCOTT:** Your Honor --

2 **THE COURT:** -- by the Plaintiffs on that.

3 **MR. SCOTT:** Our position is that this is simply
4 discovery sought for the purpose of potentially leading to
5 discoverable evidence, the cross examination of these witnesses
6 before us who say these people responded in the following way.
7 We have already before us, the parties do, a database of
8 information related to whether someone is registered to vote,
9 whether someone has proper I.D. We can cross check every one
10 of these people --

11 **THE COURT:** Right. But I guess --

12 **MR. SCOTT:** -- who say they don't have proper I.D.

13 **THE COURT:** The response was pretty specific in
14 citing some matters that, you know, appear to be right on
15 point. So I didn't know if the Defendant had anything to say
16 on what was provided by the Plaintiffs.

17 **MR. SCOTT:** Your Honor, I do not think we have our --
18 any further briefing on this matter yet.

19 **THE COURT:** Okay. The Court is going to deny the
20 Defendants' motion to compel with respect to that matter, list
21 of the respondents or the individuals who responded to the
22 survey taken by Barrera and Sanchez.

23 Okay, what else is left on DE454?

24 **MR. SCOTT:** The last thing is the underlying data on
25 the Catalist information. So Catalist provided information

1 which the Plaintiffs have provided to us that was provided to
2 Dr. Ansolabehere. What they have not provided is the
3 underlying basis or foundation of any of that information. So
4 they have an expert who worked up some numbers in a black box.
5 He provided that over to Dr. Ansolabehere, and Dr. Ansolabehere
6 then used that information to come up with his opinions.

7 And Dr. Ghitza -- or I don't know how you pronounce
8 his last name. Hold on a second, I'll give you a spelling.
9 G-h-i-t-z-a. Is the individual who works with or for Catalist
10 and is the one that provided the opinions or the information
11 that Dr. Ansolabehere is depending on.

12 One of the real important parts about this is
13 Dr. Ansolabehere is making ultimately his opinion based upon
14 the effect of SB14 based upon the analysis of whether someone
15 is white, Hispanic or black; based upon the information, at
16 least in part, of what he received from Catalist.

17 What we know is that Catalist has qualified the
18 percentage of accuracy that they think it is for any of these
19 individuals. We don't know how they come to those numbers, yet
20 we know that Dr. Ansolabehere, at least in part on his report,
21 has relied upon those numbers. And so we think it's perfectly
22 proper discovery to be able to be -- to have the foundation for
23 which Dr. Ghitza comes up with his opinion.

24 **THE COURT:** Okay. Who is responding? Mr. Heard?

25 **MS. BALDWIN:** Ms. Baldwin for the United States, your

1 Honor. This Catalist information that is referred to in
2 Mr. Ghitza's report, Mr. Scott accurately states that we have
3 produced to the State everything that Catalist gave to us and
4 to Dr. Ansolabehere. The way that Catalist's race estimations
5 work is that they take some underlying data like the voter's
6 name, census information and age, and they input that into a
7 computer program and they get results. Catalist has
8 independently validated those results by looking at other
9 states that had self-reported race information and comparing
10 the accuracy of those results with the states that have self-
11 reported race information from their voter rolls.

12 The only data that Catalist literally has in its
13 possession is the information that's input into the computer
14 program, which we've already provided, which is all of the
15 census location information and name and age information. We
16 provided that. Catalist has the output of the computer
17 program, and Catalist has the validation data. As we wrote in
18 our motion, we are happy to discuss with Texas providing
19 validation data that Catalist also has, but there is no other
20 data to provide.

21 **THE COURT:** Okay. The Government's representing
22 other than the validation data there's nothing else to provide,
23 Mr. Scott.

24 **MR. SCOTT:** So if we could make sure that at trial
25 that Dr. Ghitza admits that he just did this out of the blue

1 and there is nothing that he is relying on other than what the
2 Government has provided, that's great. But if he is relying
3 upon those opinions of something else, I think we're entitled
4 to it.

5 **THE COURT:** Well, I agree. But the Government is
6 representing whatever he is relying on has already been
7 produced except maybe this validation data. Is that correct,
8 Ms. Baldwin?

9 **MR. SCOTT:** That's perfect.

10 **MS. BALDWIN:** Yes, your Honor. As Mr. Ghitza
11 explained in his report that, you know, the validation that
12 they've done and there's the additional academic literature
13 that validates it, that Catalist in the report there isn't any
14 other data that Catalist has that we'll be relying on.

15 **THE COURT:** Okay. That's the representation; it is
16 what it is. And you all are going to discuss the validation
17 data further?

18 **MR. SCOTT:** It sounds like if she's willing to give
19 that --

20 **THE COURT:** Yeah.

21 **MR. SCOTT:** -- that will resolve that issue.

22 **THE COURT:** I think she wants to talk to you about
23 some parameters on that. Is that right, Ms. Baldwin?

24 **MS. BALDWIN:** Yes, your Honor.

25 **MR. SCOTT:** That's great. And then the last thing,

1 again, is on Dr. Webster the geo track. The reason that's
2 important is, we've brought it up, it's the census -- it's the
3 material that Dr. Ansolabehere provided to Dr. Webster and that
4 we found out about this past week. We found out on Tuesday
5 that there was a spreadsheet received. And so our expert
6 reports are due on that issue tomorrow, except that's not much
7 time for our man to be able to respond to this information
8 because he can't find the identity of those people. So I
9 wanted to make sure from a clarification standpoint the
10 Department of Justice is providing the I.D.s of those
11 individuals that they provided on the census track information
12 that Dr. Ansolabehere gave to or was provided to Dr. Webster.

13 **THE COURT:** Ms. Bald --

14 **MR. FREEMAN:** Your Honor, this is Dan Freeman on
15 behalf of the United States. And the United States did not
16 provide the identities or I.D.s of individual voters, in
17 particular census tracks to Dr. Webster but --

18 **THE COURT:** Okay. I'm sorry. Did he say that the
19 expert -- I'll just call him Dr. A -- Ansolabehere, I guess,
20 produced something to this other expert?

21 **MR. FREEMAN:** Yes, that's been provided to the State.
22 What Dr. Ansolabehere provided was an aggregation by census
23 track the number of valid voters in each census track and the
24 number of voters who had matched in that census track to an
25 SB 14 I.D. And from that simple subtraction yields the number

1 of voters who are not matched -- valid voters who are not
2 matched to SB14 in the census track. That is the entirety of
3 the no-match related cases that Dr. Webster relied upon, and
4 that is the entirety of data that is provided. And we have
5 provided that to the State.

6 The State seems to be requesting that we -- and we've
7 also provided to the State -- I'm sorry. Included in that are
8 all the tracking numbers for all the tracks in Texas that each
9 of those sets of voters are assigned to.

10 The State seems to be requesting a separate list that
11 was never created and never provided of all of the no-match
12 voters throughout the state with their tracks number assigned
13 to them as well. That was never -- it's not relied upon by
14 Dr. Webster. If the State wants us to create that as a
15 separate list on top of the separate list that we are already
16 creating for the State and created for the State, we can
17 discuss that. That is not something that Dr. Webster relied
18 upon.

19 **MR. SCOTT:** And your Honor, again, the representation
20 may kill it. Because ultimately I just want to make sure the
21 record is clear. So that if they're saying all that
22 Dr. Webster has is a brown sack with a number on it and he has
23 no earthly idea what's inside that sack other than somebody
24 gave him that sack with a number on it, that's great. We can
25 live with that and we can cross examine him on that, and the

1 record will be clear that he had no basis for his opinion on
2 that other than what -- the trustworthiness of
3 Dr. Ansolabehere. That's something we can live with.

4 But I just don't to be surprised at trial that they
5 say, yes, there is the individuals who were there and now all
6 of a sudden he has the identification of these individuals,
7 which they clearly possess, and he is able to track how far,
8 for instance, they would go travel from Point A to Point B to
9 go get a driver's license. That would be --

10 **MR. FREEMAN:** Your Honor, I --

11 **(Voices overlapping)**

12 **MR. SCOTT:** -- that would be absolutely unfair.

13 **MR. FREEMAN:** -- asked cocounsel repeatedly to
14 explain exactly what information was provided. And to the
15 extent that those assurances are not sufficient for Mr. Scott,
16 he can ask Dr. Webster questions about what was provided at the
17 deposition. But I assure you that there is no other
18 information we are withholding from the Defendants.

19 **THE COURT:** Okay. Well, if that's the
20 representation, it is what it is. And again, then nothing will
21 be sprung at trial outside of what we've discussed and what has
22 been represented was produced. And everyone is operating under
23 the same situation there.

24 **MR. FREEMAN:** Absolutely, your Honor.

25 **THE COURT:** Okay.

1 **MR. SCOTT:** That's great.

2 **THE COURT:** So is there anything else on 454, the
3 Defendants' motion to compel?

4 **MR. SCOTT:** No, your Honor.

5 **THE COURT:** Okay. Other than you all are going to
6 discuss the no-match list further and we may need to get
7 together -- not the no-match list, I'm sorry. I'm sorry I'm
8 going back. I'm jumping back to another matter. So we're okay
9 on 454.

10 **MR. SCOTT:** I think it's the Catalist material that
11 we're going to be --

12 **THE COURT:** Right.

13 **MR. SCOTT:** -- discussing with DOJ.

14 **THE COURT:** It's a different matter. So nothing left
15 remaining on DE454, correct, the way I see it?

16 **MR. SCOTT:** I believe that's correct, your Honor.

17 **THE COURT:** Okay. There was just on, I guess,
18 Thursday the Plaintiffs filed -- there were two documents filed
19 but from the different Plaintiffs. The motion to strike the
20 Defendants' affirmative allegations and defenses, I don't have
21 any briefing, honestly, on that yet from the Defense. But what
22 is the plan, to brief that and then we --

23 **MR. SCOTT:** Our plan is to hope the Court denies it
24 out of hand because it's dilatory and harassment, I guess, for
25 lack of a better thing. If not, we'd like at least the 21 days

1 that's under the rules.

2 **THE COURT:** Well, you can't have 21 days because
3 we're coming up on trial.

4 **MR. SCOTT:** Well, I think the issue though relates
5 back to it's the Section Three issue. And so it may be
6 something if the Court were willing is to carry it -- to find
7 out if we're going to get to that point or not. And if we are,
8 then let's take it up at that time. Failing that then we would
9 like at least, I guess, the eve of whenever we're talking about
10 having a hearing on that matter.

11 **THE COURT:** Who wants to address that?

12 **MR. HEARD:** Your Honor, this is Brad Heard for the
13 United States. We had advised the Court that we had intended
14 to file a motion to strike, which is docket entry 456, as well
15 as the motion to determine the sufficiency of their responses,
16 which is docket 459. We had advised the Court that we intended
17 to file those motions and we had requested that the Court hear
18 those motions at this hearing. We had assumed that the
19 Defendants would be filing their responses to those motions on
20 Tuesday at noon, as they had with the other motions that the
21 Court --

22 **THE COURT:** Well, the thing is until they're actually
23 filed, you know, it's a little bit different than when
24 something is already filed and we say and I tell you I'm going
25 to address it at the next status hearing and I order some

1 responses. But we were in a little bit different situation I
2 think with --

3 **MR. HEARD:** I understand, your Honor. We would just
4 appreciate a hearing on that, as we would appreciate the
5 Court's direction on the responses as soon as possible.

6 **THE COURT:** Okay.

7 **MR. HEARD:** That would be great on both of those
8 motions.

9 **MR. SCOTT:** And from a logistics standpoint, your
10 Honor, starting Monday we'll be in Washington, D.C. as a
11 concession to the -- as to the Plaintiffs on taking a number of
12 their experts up there. I think we're doing about ten or
13 eleven of them next week so -- experts. And so we've scheduled
14 very long days. This is, obviously, a huge motion to try and
15 strike somebody. It's very unusual, very frowned upon by every
16 research thing I can recall from any point in my practice. But
17 at least the time period to get back from Washington, D.C. to
18 be able to address those. That next week we've got pretrial
19 conference on that Wednesday. Could we have until that
20 Tuesday?

21 **THE COURT:** You're talking about next week?

22 **MR. SCOTT:** Well, next week --

23 **THE COURT:** The following.

24 **MR. SCOTT:** The following week, yes. Yes, ma'am.

25 **THE COURT:** Okay.

1 **MR. SCOTT:** I think that's the 26th.

2 **THE CLERK:** The 26th, your Honor.

3 **THE COURT:** Does the Plaintiff have any issue with
4 just -- when are we having the final pretrial, that Wednesday,
5 Brandy, or --

6 **MR. SCOTT:** Yes, ma'am, I think it's the 27th.

7 **THE CLERK:** On the 27th, your Honor, at 9:00 o'clock.

8 **THE COURT:** Is this a matter than can be addressed at
9 the final pretrial or anything further on that from the
10 Plaintiffs?

11 **MR. HEARD:** Your Honor, we would request -- we would
12 request a briefing --

13 **THE CLERK:** I'm sorry. I don't mean to interrupt,
14 but who is speaking?

15 **MR. HEARD:** I'm sorry. This is Brad Heard for the
16 United States. We would request a briefing deadline of next
17 week. That would have given them --

18 **THE COURT:** I don't mind doing that. I'm just
19 talking about can we just hear it at the final pretrial
20 conference.

21 **MR. HEARD:** Uh, I --

22 **THE COURT:** It sounds like you all are going to be
23 pretty tied up next week. We can certainly have a status
24 hearing like we've been doing, but is that going to be feasible
25 with you all's schedule?

1 **MR. HEARD:** Your Honor, I think it's fine to have
2 that motion heard at the pretrial conference. We would like
3 the response next week.

4 **THE COURT:** Okay. How about by a week from today, by
5 next Wednesday a response on file?

6 **MR. SCOTT:** Okay. Could we have --

7 **THE COURT:** Okay?

8 **MR. HEARD:** By Wednesday, the 20th?

9 **MR. SCOTT:** May I have until Friday, your Honor? The
10 reason I --

11 **THE COURT:** That's fine. The 22nd?

12 **MR. SCOTT:** Yes.

13 **THE COURT:** August 22nd.

14 **MR. SCOTT:** Thank you.

15 **THE COURT:** Okay. So that's going to be in regards
16 to the motion to strike the Defendants' affirmative allegations
17 and defenses. And would that also then pertain to the
18 sufficiency of the responses on the request for admissions, or
19 do we take that up separately?

20 **MR. HEARD:** Your Honor, Brad Heard. We would
21 appreciate a response to that motion by next week as well and
22 to take that up. Again, the responses to the request for
23 admission is an evidentiary issue and all these issues need to
24 be resolved.

25 **THE COURT:** Okay. So same thing then, response to be

1 filed by a week from Friday?

2 **MR. SCOTT:** Yes, ma'am.

3 **THE COURT:** And then we will address the issues at
4 the final pretrial the following week.

5 Hold on. Give me just a couple of minutes here.

6 **(Pause)**

7 There was a matter that was filed late last night by
8 the Defendants. And I mean obviously I don't think the
9 Plaintiffs would be ready to respond by that, but there was
10 Defendants' motion to compel production of documents and
11 additional deposition testimony. Mr. Scott?

12 **MR. SCOTT:** I --

13 **MR. TATUM:** Your Honor, this is Steve Tatum for the
14 Defendants. I'll be addressing that motion.

15 **THE COURT:** Okay.

16 **MR. TATUM:** Your Honor, this motion concerns a
17 document that the Defendants have sought through discovery for
18 almost six months now. Those documents are:

19 One, documents from individual Plaintiffs which could
20 be used to get a birth certificate, a birth certificate could
21 be used to get an acceptable form of I.D. under SB14.
22 Therefore, the existence of those documents is certainly
23 relevant to any allegation of harm by an individual Plaintiff.
24 I'll refer to those as simply birth certificate documents.

25 The second category of documents are documents from

1 individual Plaintiffs that could be used to obtain a PID or a
2 Texas driver's license or personal I.D. card. Those PID or
3 Texas driver's license or personal I.D. card, are acceptable
4 forms of I.D. under SB14 and, thus, the documents that could be
5 used to get them are certainly relevant to Plaintiffs' alleged
6 harm under SB14 for not having those documents. I'll refer to
7 those as identification documents.

8 The third category of documents are documents related
9 to the membership of the organizational Plaintiffs. These are
10 relevant to the issue of standing and whether the organizations
11 have suffered a legally cognizable injury on account of SB14.
12 I'll refer to those as membership documents.

13 So that's the universe of documents that this motion
14 concerns. Now, Defendants sought these documents through
15 normal discovery means, i.e. RFPs, back in April. Both the
16 individual and organizational Plaintiffs expressed any
17 objection to those requests for production and Defendants
18 subsequently met and conferred with them, in turn, to see if a
19 resolution could be reached.

20 With regard to the individual Plaintiffs, as a result
21 of those discussions and in an attempt to address their
22 concerns, we circulated a draft checklist of the specific birth
23 certificate and identification documents we believe were
24 relevant to the individual Plaintiffs and the ones we were
25 seeking to be produced.

1 Counsel for the Veasey LULAC Plaintiffs then
2 expressed concerns or objections to those lists. And
3 subsequent discussions on those objections through the course
4 of those discussions Defendants were led to believe that the
5 Plaintiffs were agreeable to using a fact stipulation in lieu
6 of producing documents covered in our request.

7 Now, pursuant to those discussions, Defendants went
8 back to the drawing board and on August 11th circulated draft
9 stipulations which were painstakingly compiled and which
10 addressed each of the concerns expressed by the individual
11 Plaintiffs in the various meet and confers that had been held
12 up to that point and which limited the scope of the information
13 sought accordingly. And the specifics of how we limited those
14 stipulations are detailed in the motion on Pages 4 and 5.

15 With respect to the organizational Plaintiffs, all of
16 which refused to provide any responsive membership information
17 requested in our request for production, an agreement was
18 reached through various meet and confer conferences in which
19 counsel for Plaintiffs would either, one, identify the member
20 or members of who the organization is aware had been or may be
21 injured by SB14 or, in the alternative, state that it is either
22 unaware of the identity of a particular member who has or may
23 be injured, or that it did not maintain sufficient information
24 to identify any such member. That agreement is detailed in
25 full on Page 7 in our motion.

1 So at this point Defendants were -- you know,
2 understood that we had reached a certain agreement that we
3 would provide fact stipulations in lieu of specific document
4 production by both the individual and organizational
5 Plaintiffs. However -- and this would be precipitated and give
6 rise to our motion -- we have been made aware that no
7 individual or organizational Plaintiff is willing to enter into
8 any fact stipulation. And we know that because some of the
9 individual and organizational Plaintiffs have flatly told us
10 they are not willing to enter into any fact stipulation, while
11 others have simply ignored our e-mails requesting a conferral
12 on the draft stipulations that we sent them on August 11th.

13 So we're 18 days before opening argument, and
14 Defendants kind of find themselves hung up and dry despite our
15 lengthy and repeated efforts to address my concerns with
16 respect to these clearly relevant documents. And we request
17 that the Court -- we request an order from the Court compelling
18 them, the individual and organizational Plaintiffs, to produce
19 the birth certificate documents, the identification documents
20 and the membership documents and to permit us to reopen
21 depositions as we deem necessary in Austin to inquire about
22 these documents.

23 Now, I will say that counsel for the Texas NAACP has
24 reached out to us and we are in the process of working out some
25 kind of resolution to this that would look like, you know, a

1 supplemental answer to our request for production. We're still
2 working that out though. We haven't finalized it yet. So I
3 will say there's no update on their part with regard to this
4 motion. But we have not heard from anyone else.

5 **THE COURT:** All right. Does anyone else want to
6 comment? I know this motion was filed late last night, but any
7 other --

8 **MR. ROSENBERG:** Your Honor, this is Ezra Rosenberg on
9 behalf of the Texas NAACP and MALC. And just one -- well,
10 there are a couple of corrections I can make with Mr. Tatum's
11 presentation. But I think the key here is that during the meet
12 and confer that we did have last night for about a half hour,
13 which I followed up with a couple of e-mails suggesting
14 resolution, I suggested that this was a premature motion. But,
15 in any event, we're not ready to respond other than to say we
16 are negotiating in good faith.

17 I do want to add one thing to that. There was never
18 a suggestion that there would be stipulations of fact that
19 would be set forth as a result of the agreement that we reached
20 on June 3rd. Rather, that the agreement itself says that the
21 Plaintiffs can respond to requests for production by making the
22 certain representations.

23 And, in fact, on Page 7, Footnote 8 of the brief that
24 was filed last night, as to Texas NAACP it specifically says
25 because this agreement was reached a day or two before the

1 depositions that we bring our response to tomorrow's
2 deposition. At the deposition my colleague, Amy Rudd, put on
3 the record the representation saying that at that time we did
4 not -- we were not aware of anyone -- any member who had been
5 injured. That was we thought was compliance and no one told us
6 otherwise. That representation was amended about a month later
7 when other information came to us. And again, we were not told
8 that wasn't sufficient. It was only last week when all of a
9 sudden we were sent the stipulations of fact.

10 But I'm not going to really burden the Court with
11 this any more because I think we can resolve this simply by
12 revising our supplements to -- by supplementing our responses
13 to the request for production.

14 **THE COURT:** Okay. Does anyone else want --

15 **MR. DUNN:** Your Honor, yes, this is Chad Dunn on
16 behalf of the Veasey LULAC Plaintiffs. And I just feel like I
17 need to respond to this, although I agree the parties probably
18 ought to discuss it further before the Court makes a ruling on
19 it.

20 But I do want to note that the State had sent -- I
21 want to note some corrections to what I think has been recited
22 in the facts and the background of this matter. The State had
23 sent some 600 requests for production to the individual
24 Plaintiffs asking for things like their tax returns and credit
25 reports and every type of personal document anybody wouldn't

1 want to turn over, especially to the State.

2 And we objected to those and said that they were
3 unnecessary. The State came to us and explained that the
4 reason they wanted to actually look at each and every one of
5 these highly private documents was so they can demonstrate that
6 each of these individuals might have two or four or five of the
7 underlying documents that would assist in obtaining your birth
8 certificate or one of these I.D.s.

9 We suggested in response that it isn't necessary for
10 the State to actually see the credit report or the tax return
11 but instead just to have an admission that it existed. So I
12 proposed in a meet and confer back in June, early June, that
13 the State give us a list of the individual documents that they
14 want Plaintiffs to determine whether existed or not. We would
15 prior to our Plaintiffs' deposition, which in my group's case
16 hasn't occurred yet, make sure that they search their files and
17 could confirm at their deposition which of those documents they
18 had possession of.

19 Then we didn't hear anything from the State for two
20 months. And now the week before we're all going to be in
21 expert depositions essentially every business day between now
22 and the trial, the State filed or delivers to us an enormous
23 stipulation and all sorts of facts that go far outside the
24 bounds of which you would be entitled to at a request for
25 production. And the State filed its motion on the eve of this

1 hearing asking us essentially to run around and get our clients
2 in the next two weeks when we have a load of things to do, such
3 as findings of fact, depositions, move the equivalent of a
4 football team's roster, people down to Corpus Christi, and have
5 us collect our private Plaintiffs' tax returns, credit reports
6 and 590 other documents. It smacks of a time (indiscernible),
7 frankly.

8 And although we're willing to talk to the State
9 certainly about a stipulation on who is affected in the
10 individual civil rights organization Plaintiffs, and we're
11 willing to work with the State on a stipulation as to what
12 individual Plaintiffs have in their possession or did they have
13 at least a certain number of these background documents; we
14 don't have the time and it is unduly burdensome, it's totally
15 irrelevant and unnecessary for us to be running around and
16 dragging up 590 different documents for our Plaintiffs when the
17 State had an opportunity to deal with this before the
18 Plaintiffs' deposition and sat on it for two months until then.

19 **THE COURT:** Okay.

20 **MR. TATUM:** Your Honor, in response to that I would
21 say that the only reason --

22 **THE COURT:** Who is speaking?

23 **MR. TATUM:** -- we filed this motion is because we did
24 not hear --

25 **THE COURT:** Who is speaking? Sorry, who is speaking,

1 for the record?

2 **MR. TATUM:** Oh, I'm sorry. This is Steve Tatum for
3 the Defendants.

4 **THE COURT:** Go ahead.

5 **MR. TATUM:** The reason we filed this motion last
6 night is because we did not hear from any of the individual
7 Plaintiffs, specifically the Veasey LULAC Plaintiffs, who we
8 requested confer with us regarding these stipulations. These
9 were draft stipulation that were proposed. These were not
10 merely stipulations, enter into them or no. These were
11 stipulations which we have talked about repeatedly for all of
12 this time -- you know, counsel represents we've been doing
13 nothing for two months; that's wrong. Here are these
14 stipulations we've been talking about all this time, these are
15 composed, here they are if we can take a look at them and
16 confer with us about them before close of business.

17 We never heard from them. Thus, you know, we're
18 18 days from trial and we can't push this off another week. So
19 we filed the motion last night and we're going to key this up
20 in front of you today. So that's why we're here; that's why
21 this motion is here.

22 And all we're asking for is stipulations. We're not
23 necessarily asking them to round up all these documents. We're
24 asking for stipulations. And that's what is at issue here.
25 And I think counsel is drastically overstating the burden that

1 exists, if any, on them and, you know, working with us with
2 regard to these stipulations.

3 **THE COURT:** Anyone else?

4 **MS. CONLEY:** And your Honor, this is Danielle Conley
5 for Imani Clark and the Texas League. And as you noted, the
6 State filed its motion late last night. We haven't had the
7 opportunity to study it in detail, but we're open to meeting
8 and conferring on the issue of the checklist. And we told the
9 State of Texas this much, including an e-mail to them last
10 night. And so, you know, it's our position that this motion is
11 prematurely before the Court. We're open to meeting and
12 conferring...

13 **THE COURT:** Okay. Well, then you all need to confer
14 and let the Court know if I need to get involved. Is there --

15 **MR. TATUM:** Your Honor?

16 **THE COURT:** Yes.

17 **MR. TATUM:** I'm sorry.

18 **THE COURT:** Go ahead.

19 **MR. TATUM:** Your Honor, Steve Tatum for the
20 Defendants. Again, I would just reiterate that we're
21 requesting an order on this motion today because --

22 **THE COURT:** Okay. Well, I'm not going to do it today
23 because you filed your motion late last night. What's today?
24 It's Thursday. You know, I thought you all were going to be
25 busy next week, but I can certainly -- we can hear it, you

1 know, next week.

2 **MR. TATUM:** And your Honor, we will be busy next
3 week. And I just say an order as soon as possible. Not
4 necessarily today but the reason --

5 **THE COURT:** Well, no. Then you all are going to
6 confer. I'm not going to do any extra work that I don't
7 need -- that I don't have to do, because I have a lot to do
8 already. So you all are going to confer this afternoon and we
9 can get on the phone tomorrow morning if we need to about this.

10 **MR. SCOTT:** That's great, your Honor. Thank you.

11 **THE COURT:** Anything else on that issue?

12 **MR. SCOTT:** Not at this time.

13 **MR. SPEAKER:** No, your Honor.

14 **THE COURT:** Brandy, I know I have some sentencings
15 tomorrow. What time would the Court be available?

16 **THE CLERK:** Eleven thirty, your Honor, or in the
17 afternoon.

18 **(Court confers with the Clerk)**

19 **THE COURT:** So you all have got a hearing scheduled
20 tomorrow morning at 8:30. If this matter is not resolved, we
21 can flush it out then.

22 **MR. TATUM:** Thank you, your Honor.

23 **THE COURT:** All right. Is there anything else from
24 the Plaintiffs that needs to be discussed today?

25 **MR. ROSENBERG:** Just very briefly, your Honor. This

1 is Rosenberg. One suggestion I have perhaps to reduce the
2 burden on both the parties and the Court, if it's acceptable to
3 the Court, in the pretrial order there's a provision in your
4 standard pretrial order for a statement of disputed facts.
5 Given that the parties are filing detailed findings of fact and
6 conclusions of law commensurate with the filing of the pretrial
7 order, I was wondering if that could take the place of the
8 statement of disputed facts.

9 **THE COURT:** I'm okay with that.

10 **MR. SCOTT:** We're absolutely agreeable, your Honor.

11 **THE COURT:** Yeah.

12 **MR. ROSENBERG:** Thank you, your Honor.

13 **THE COURT:** What else? What else? From the
14 Plaintiffs?

15 **(No response)**

16 From the Defendants?

17 **MR. SCOTT:** Your Honor, is it possible -- make I
18 speak to Ms. Baldwin via the Court?

19 **THE COURT:** Yes.

20 **MR. SCOTT:** Is it possible to get that list from
21 Dr. Ansolabehere since it sounds like it's ready? Can we get
22 it today so our expert can review it before his report is due
23 tomorrow? So if we could get it today it would be great.

24 **MS. BALDWIN:** I would be happy to talk and see if we
25 can do that. I'd just have to check with our litigation

1 support since we may, you know, want to use (indiscernible)
2 previously.

3 **MR. SCOTT:** That would be absolutely fine.

4 **THE COURT:** Okay. So it's my understanding then the
5 parties are going to confer on DE441 regarding the documents
6 that were requested by the Defendants regarding the election
7 crimes and voter frauds, specifically you all were going to
8 look -- or Government was -- the United States was going to
9 look at the summary provided by the Defendants to let me know
10 what the Government was willing to do and not do so I could --
11 we could get to the bottom line on that.

12 You all are going to confer on the motion by the
13 Defendant that was just filed last night. And I think that's
14 it. We'll have a hearing in the morning if we need to,
15 correct? And if you all --

16 **MR. HEARD:** Your Honor, Brad Heard for the United
17 States. Just for the record, we have made a request of the
18 Defendants just shortly after you encouraged us to confer,
19 consultation on the fraud documents. We have made a request of
20 them to supply us with the exact source that they were
21 referencing before the Court today, and we are awaiting that
22 response.

23 **THE COURT:** Okay, very good. All right. Anything
24 else for now?

25 **(No response)**

1 Okay. Then you are excused. Thank you.

2 **(Counsel thank the Court)**

3 **THE COURT:** Thank you.

4 **(This proceeding was adjourned at 11:29 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

August 18, 2014

TONI HUDSON, TRANSCRIBER